Supreme Court, U.S.
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No. 94-358

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

DUCHESNE COUNTY, MERV TAYLOR,
JERRY FOOTE, and CLAIR POULSON,
Petitioners,

v.

LOUIS F. ARNOLD, Respondent.

Petition for a Writ of Certiorari
To the United States Court of
Appeals for the Tenth Circuit

BRIEF IN OPPOSITION

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13 pp

QUESTION PRESENTED FOR REVIEW

May a state enact a limitations statute specifically applicable to section 1983 actions?

PARTIES TO THE PROCEEDING

All parties to this proceeding are listed in the caption.

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, Louis F. Arnold, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by the Petioners Duchesne County, Merv Taylor, Jerry Foote, and Clair Poulson.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at 26 F. 3d 982. A copy is attached to Petitioners' Petition as Appendix A. The memorandum decision and order of United States District Court Judge Dee V. Benson is reported at 810 F. Supp. 1239, and a copy is attached to the Petitioners' Petition as Appendix B.

JURISDICTION

The judgment of the Tenth Circuit Court of Appeals was entered on May 27, 1994. This Court has jurisdiction over the petition pursuant to 28 U.S.C. 1254(1).

STATUTES INVOLVED

The statutes involved are 42 U.S.C. 1983, 42 U.S.C. 1988, Utah Code Ann. 78-12-25(3) and Utah Code Ann. 78-12-28(3).

STATEMENT OF THE CASE

Plaintiff, Appellant, and Respondent Louis F. Arnold was arrested by officers of the Duchesne County Sheriff's Department on April 21, 1988, and charged with selling a stolen firearm. The charges were subsequently dismissed. On April 17, 1992, Arnold brought this action against Duchesne County, Sheriff Clair Poulson and officers Merv Taylor and Jerry Foote, asserting claims under 42 U.S.C. 1983, 1985, 1986 and 1988, as well as numerous state law claims.

Defendants filed a motion to dismiss, arguing that Arnold's action was barred by Utah's two-year statute of limitations specifically made applicable to section 1983 claims, 78-12-28(3) U.C.A. Judge Dee V. Benson granted the motion to dismiss on the grounds that Arnold's lawsuit was barred by the two-year statute of limitations.

Arnold appealed the dismissal of his case to the Tenth Circuit Court of Appeals, which reversed the lower court on the grounds that the two-year statute of limitations was inconsistent with federal law and policy and therefore invalid as a matter of federal law. That Court held that section 78-12-28(3), by its terms, specifically targets section 1983 actions, and was passed for a purpose which would clearly contradict section 1983's broad remedial objectives. The Court of Appeals concluded that neither Congress or the courts have authorized states to create limitations periods specifically and exclusively applicable to section 1983 actions.

REASONS FOR DENYING THE PETITION

I.

THE PETITION DOES NOT SET FORTH A SUBSTANTIAL ISSUE OF LAW FOR REVIEW

This case presents no novel question of law because Utah is the only state affected. It has the only statute in the country that provides an explicit limitations period for section 1983 actions. This special statute reduces the

limitations time in Utah to two years instead of four, as provided by the Utah personal injury and residual statute. See Arnold v. Duchesne County, 26 F.3d 982 (10th Cir. 1994) (Appendix A-7-A-8).

This case is nothing more than the Petitioners' dispute with the Tenth Circuit opinion holding that the Utah statute specifically targeting section 1983 is inconsistent with the nature and purpose of the civil rights statutes, and therefore cannot be applied to section 1983 actions in Utah. Neither Congress of the Supreme Court has authorized states to create limitations periods specifically and exclusively applicable to section 1983 actions.

The decision of the Tenth Circuit does not depart from the accepted and usual course of judicial proceedings, nor does it sanction such a departure by the lower court, to call for an exercise of this Court's power of supervision. The court of appeals' decision involved no important question of federal law which has not been, but should be, settled by this court, nor did it decide a federal question in a way that conflicts with applicable decisions of this Court.

II.

THE TENTH CIRCUIT DECISION DOES NOT CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS ON THE SAME MATTER

There is no split among the Circuit Courts of Appeals on the issue presented in this case. The cases cited by Petitioners involved an Oregon statute

which referred specifically to section 1983, and which was upheld by the Ninth Circuit in 1984. See Nored v. Blehm, 743 F. 2d 1286 (9th Cir. 1984). These cases are not applicable to the present case, since the Oregon statute has been amended and the specific section 1983 language has been removed.

Further, the cases cited pre-date Wilson v. Garcia, 271 U.S.261 (1985) and Owens v. Okure 488 U.S. 235 (1989). Thus, while there may have been an apparent conflict of opinion in the Circuits ten years ago, those cases have since been superseded by the Wilson and Owens decisions of this Court.

There is no split in the Circuits at the present time, and the principles set forth in Wilson and Owens are now well-settled law, and control the outcome of this case.

III.

THE TENTH CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT 78-12-28(3) U.C.A. DOES NOT APPLY TO SECTION 1983 ACTIONS

Respondent submits that the Tenth Circuit Court of Appeals correctly followed the decisions of this Court, and overruled the lower court based upon principles of law which are now well settled. This Court in Wilson, supra, held that the most appropriate limitations period is the one applicable to tort actions for personal injuries: "it is supported by the nature of the section 1983 remedy, and by the federal interest in ensuring that the borrowed period of

limitations not discriminate against the federal civil rights remedy. Id. at 276.

The Utah four-year statute, 78-12-25(3) U.C.A., was selected by the Tenth Circuit in Mismash v. Murray City, 730 F. 2d 1336 (10th Cir. 1984), cert. denied, 471 U.S. 1052 (1985). It was implicitly endorsed by this Court in Owens, supra. The Owens Court resolved the problem of the Wilson decision in states with multiple personal injury statutes, by its "practical inquiry" rule holding that 'Courts considering a section 1983 claim should borrow the general or residual statute for personal injury actions," Owens, 488 U.S. at 249-50.

The decision of the Tenth Circuit which held that the Utah four-year statute, but not the special two year statute, applies to section 1983 actions does not decide a federal question which conflicts with the decisions of this Court. On the contrary, the Court of Appeals correctly followed the decisions of this Court set forth in Wilson and Owens.

The Petitioners' assertion that the Federal Courts are subject to the power of a state to limit the broad purposes of the Civil Rights statutes, and section 1983 in particular, is contrary to settled case law. The cases cited by Petitioners in support of its position are cases that were decided prior to this Courts' decisions in Wilson v. Garcia, supra, and Owens v. Okure, supra. The cases relied upon by the Petitioners are pre-Wilson and pre-Owens.

States may not discriminate against or otherwise truncate the federal cause of action guaranteed by the Civil Right laws. By enacting a statute which interferes with and is contrary to federal law and antagonistic to the broad remedial objectives of the Civil Rights laws, the Utah legislature has acted in a manner inconsistent with the Constitution and laws of the United States.

Contrary to the argument advanced by Petitioner, a "void" does not exist in the limitations period to be applied to a section 1983 action. Since the Mismash decision, it has been clear that Utah's four-year statute applies. This Court's decision in Owens resolves any potential uncertainty as to the limitations period in Utah. Claims that other States need to enact specific statutes of limitations for section 1983 claims are pure speculation. As a matter of fact, the other states have uniformly adopted the Owens decision, and are applying their own general personal injury or residual statutes to Civil Rights cases.

Respondent submits that the Utah statute was properly invalidated by the Tenth Circuit as being inconsistent with Federal law and policy. It is submitted that any Utah statute which provides a statute of limitations specifically applicable to section 1983 which is significantly shorter than the present four-year statute, or one which does not apply to all sections of the Civil Rights acts will not be applicable. The State of Utah may not usurp thejurisdiction and authority of the Federal Courts.

CONCLUSION

Respondent Louis F. Arnold respectfully requests that this Court deny Petitioners' Petition for Writ of Certiorari, because the case presents no issue appropriate for the Court's review, because there is no conflict in the present decisions of the Circuit Courts of Appeal, and because the decision of the Tenth Circuit Court of Appeals was not in error.

Respectfully submitted,

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December 5, 1994.